

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 19-3248

United States of America

Appellee

v.

Kevin Herring

Appellant

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Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids  
(1:18-cr-00058-LTS-1)

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**ORDER REGARDING FILING IN  
CHILD VICTIM AND CHILD WITNESS CASES**

This criminal appeal involves a child victim or witness and child pornography and is governed by the procedures set out in 18 U.S.C. Section 3509 regarding confidentiality of information and the protection of the child victim's or witness's rights. In particular, 18 U.S.C. Section 3509(d)(2) provides as follows:

Filing under seal - All papers to be filed in court that disclose the name of or other information concerning a child shall be filed under seal without the necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court -

(A) the complete paper to be kept under seal;

and

(B) the paper with the portions of it that disclose the name of or any information concerning a child redacted, to be placed in the public record

In order to assure compliance with the statute, the clerk's office will implement the following procedures. Any questions regarding the application of the provisions of this order should be resolved with the clerk of court prior to the filing or submission of a document. Counsel should note that while the clerk's office will review pleadings submitted in the case for compliance with the statute, the responsibility for redacting documents is, by statute, counsel's.

1. **TRANSCRIPTS AND OTHER RECORD MATERIALS.** Counsel should carefully redact the transcript prior to its filing in the district court. Upon filing with this court, the transcript and exhibits in the case will be placed under seal pending further order of the court. If counsel prepare and file an appendix in the appeal which contains documents disclosing the name of or other information concerning a child, they must prepare one redacted copy of the appendix for public use and three complete, unredacted copies for filing under seal. The cover of

the redacted copy must be clearly marked "REDACTED COPY," and the covers of the three complete copies must be clearly marked "UNREDACTED SEALED COPY." At the time the appendix is filed, counsel must provide opposing counsel with an unredacted copy of the appendix.

2. PLEADINGS. Any pleading filed with the court through the CM/ECF system which discloses the child's name or other information concerning the child must be redacted. Upon filing the electronic copy of the redacted document, counsel shall submit one unredacted, complete paper copy to the clerk by mail, commercial carrier or hand delivery.

3. BRIEFS AND ADDENDA. If the party's brief discloses the child's name or other information concerning the child, the brief submitted through the CM/ECF system for review and filing must be redacted. The docket text prepared by counsel at the time of submission must state the brief submitted for review and filing is a REDACTED COPY. The court will review the submitted brief, and if the brief complies with the rules it will be filed and placed on the docket as a public record. The same procedure applies for addenda submitted with the brief. When the brief is filed, counsel will receive notice of the filing and directions to transmit the required paper copies of the brief. In compliance with the provisions of the statute, the ten paper copies of the brief must be complete, unredacted copies. The covers of the paper briefs submitted to the clerk for filing must be clearly marked "UNREDACTED SEALED COPIES." At the time the paper briefs are filed, counsel must provide opposing counsel with an unredacted copy of the appendix.

4. METHOD OF REDACTING. In the redacted copies of the materials filed with the court, counsel must identify the child by initials and must refrain from providing information which would allow the identity of the child to be discovered (e.g., a child should be identified as a "L.M., a female relative," rather than "L.M., the defendant's 14-year-old daughter").

5. PAPERS WHICH DO NOT REQUIRE REDACTION. Papers, including briefs, filed in child victim and child witness cases which do not require redaction because they do not disclose the child's name or other information concerning the child should be submitted through the normal CM/ECF filing and submission procedures as set out in this court's rules.

6. DUTIES UNDER THE STATUTE. Counsel must comply with the provisions of 18 U.S.C. Sec. 3509. The clerk will maintain the confidentiality of all documents subject to the statute.

October 16, 2019

Order Entered under Rule 27A(a):  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans